

February 24, 2010

Dear Ag Council Members:

As you are aware, the Texas Department of Agriculture (TDA) is closely following the U.S. Environmental Protection Agency's (EPA) efforts to require National Pollutant Discharge Elimination System (NPDES) permits for the application of pesticides directly to water, as well as to areas in, over or near waters. If EPA moves forward with this regulation, agricultural establishments, including farms and ranches could be required by federal law to obtain a permit from EPA before applying pesticides anywhere near water.

Clearly, this new regulatory scheme could have significant negative implications for agricultural producers while providing no measurable environmental or consumer benefits. ***Therefore, it is imperative TDA know how this regulatory change will affect you so we can best represent your interests to the federal government.***

As you know, EPA is considering this new regulatory scheme because of a 2009 Sixth Circuit Court of Appeals decision that the Clean Water Act requires NPDES permits for all biological and chemical pesticide applications that may leave residues in water. This ruling implies that all water-related pesticide discharges for mosquito control, area-wide pest control, and aquatic vegetation management operations will need a permit.

Most recently, TDA and other stakeholders asked the U.S. Supreme Court to overrule the Sixth Circuit Court of Appeals on this issue. However, the supreme court, this week, rejected the petition to review the appeals court's decision, and EPA will move forward with regulation. Prior to the supreme court's decision, TDA has been working with the Texas Commission on Environmental Quality (TCEQ) to involve Texas in EPA's decision making. Through this collaborative process, we have learned that the EPA will publish a proposed rule for public comment in the Federal Register in April 2010. ***TDA has reason to believe there is a possibility for either getting agricultural pesticide applications exempted from this regulation or for convincing EPA to issue general permits so that states can decide on permits specific to each and every agricultural pesticide application.***

We must be coordinated in our efforts to bring scientific reasons for this request to EPA. I therefore encourage you to begin preparing comments to present to EPA at the appropriate time that will explain why your specific sector of agriculture or forestry should be exempted or given the allowance for a general permit. I have also requested the assistance of research experts in the agriculture field to help develop the best scientific arguments. As Texas awaits the possible proposal from EPA, please do not hesitate to communicate with TDA Policy Analyst Jason Modglin at Jason.Modglin@TexasAgriculture.gov or (512) 936-9583.

Thank you for your attention to this matter. I will be communicating further with you as the possible proposal from EPA approaches.

Sincerely yours,

Todd Staples

TS/JM/jm